THE HON'BLE SRI JUSTICE C.V. RAMULU

Thursday, 4th day of October,2007

W.P.No.1969 of 2005

Between:-

N. Srinivas … Petitioner

and

Government of Andhra Pradesh,
rep. by its Principal Secretary,
Higher Education Department,
Secretariat, Hyderabad
and others … Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.1969 of 2005

ORDER:

This Writ Petition is filed seeking a Certiorari to call for the records relating to Government Memo No.8203/CE.II-2/2001-4, dated 20-12-2004 of the 1st respondent, communicated through the letter of the 2nd respondent-Director of Collegiate Education, Andhra Pradesh, Hyderabad in Proceedings L.Dis.No.962/Admn.V-1/2001, dated 31-12-2004 and to quash the same as arbitrary and illegal and consequently to declare that the petitioner is entitled for absorption/regularization of his services in the existing grant-in-aid post of Lecturer in Commerce in Pragathi Maha Vidyalaya Degree College, Hyderabad with all consequential benefits on par with similarly situated persons like Dr.R.V.Anuradha, Lecturer in English in Pragathi Maha Vidyalaya Degree College, Hyderabad.

According to the petitioner, he has passed M.Com. from Osmania University with Distinction (72% marks) and was appointed in an unaided post of Lecturer in Commerce in Pragathi Maha Vidyalaya Degree College, Hyderabad with effect from 25-6-1990. Later, he had also passed National Eligibility Test for Lecturership conducted by the University Grants Commission in January,1991. Thus, he has been fully qualified and eligible for being appointed as a regular Lecturer. He has been discharging his duties to the utmost satisfaction of the College authorities. While the matter stood thus, the

post of Lecturer in Commerce in Pragathi Maha Vidyalaya Degree College, Hyderabad became vacant during the year 1993 consequent on promotion of one Dr.A.Venkata Ramaiah as Principal of the College. Petitioner has been working as Lecturer in Commerce since 1990 and discharging duties on par with other regular Lecturers. Persons similarly situated like the petitioner, namely, Dr.R.V.Anuradha, Lecturer in English in Pragathi Maha Vidyalaya Degree College, Hyderabad made a representation for absorption in aided post and the 1st respondent issued Orders in G.O.Rt.No.160, Higher Education, dated 16-2-2001 ratifying the action of the Management of Pragathi Maha Vidyalaya Degree College, Hyderabad in having appointed her as Lecturer without following the procedure prescribed in G.O.Ms.No.12, Education, dated 10-1-1992 and admitted the post to grant-in-aid and also given benefits notionally with retrospective effect, while implementing the Orders of this Court. Government issued several Orders regularizing or absorbing similarly situated Lecturers in various Colleges in the State and given the benefit of absorption in grant-in-aid posts. According to the petitioner, though he was named as part-time Lecturer, he has been discharging the same duties and functions on par with the regular Lecturers working in the 3rd respondent-College. Though he had also obtained similar directions from this Court and the 3rd respondent submitted proposals recommending his case for absorption against grant-in-aid post vide letter No.PMVDC/2000-2001/75, dated 11-5-2001, the same benefit was denied to him for absorption in grant-in-aid post. Therefore, the action of the respondents in adopting differential yardsticks in absorption is nothing but hostile discrimination offending Articles 14 and 16 of the Constitution of India. As such, the impugned Government Memo dated 20-12-2004 rejecting his claim for

absorption/regularization in the existing grant-in-aid post of Lecturer in Commerce is arbitrary and illegal and the same is liable to be set aside

A detailed counter affidavit has been filed by the 1st respondent denying the allegations made by the petitioner. It is asserted that though the case of one Dr. R.V. Anuradha was considered, but it was under different circumstances. The Management of the 3rd respondent-College appointed her into aided post and sought ratification of the Government for having appointed her in the grant-in-aid post and the Government vide G.O.Rt.No.160, Education, dated 16-2-2001 ratified the action of the Management. Whereas, in case of the petitioner, he was appointed as a part-time Lecturer and the scheme of regularization of part-time Lecturers working in the Private Aided Colleges formulated in G.O.Ms.No.328, Edn., dated 15-10-1997 has been annulled subsequently by G.O.Ms.No.283, Education, dated 3-11-1999 and the scheme is now not in existence. It is admitted that the Government has, in some cases, relaxed the selection procedure and absorbed the individuals into grant-in-aid posts. But, now the Government has decided not to relax any Rules in view of financial stringency and as there is a ban on filling up of aided vacant posts. Further, it is stated that the petitioner has not satisfied the conditions laid down in G.O.Ms.No.328, dated 15-10-1997 and as such, he is not entitled for regularization of his services. The said G.O. contains a scheme formulated by the Government for regularization of part-time/*ad hoc* Lecturers, who have completed 3 years of service, by 1991 or 5 years of service as on 25-11-1993. Petitioner has not fulfilled the conditions stipulated in the said G.O. and, therefore, he has no right to claim for regularization. Further, as per G.O.Ms.No.328, Edn., dated 15-10-1997, one has to put in the prescribed minimum

number of working days within the cut-off dates fixed under the said G.O.

Respondent No.3 filed a separate counter stating *inter alia* that in pursuance of the Proceedings dated 19-3-2001 of the 2nd respondent, two aided Commerce Lecturers of the Pragathi Maha Vidyalaya Degree College, Hyderabad were shifted to aided M.Com (Commerce) vacancies with effect from 5-5-2001. Thereafter, aided vacancies are in existence in the Commerce Department of the College. It is admitted that Dr.Anuradha, Lecturer in English in the College was absorbed in aided post pursuant to G.O.Rt.No.160, dated 16-2-2001. Further, the petitioner is a First Class Post Graduate with distinction and he has also cleared NET in the year 1991 conducted by the University Grants Commission, New Delhi and he is eligible for Lecturership in any University/College. Respondent No.1 ought to have considered the qualification, the services rendered by the petitioner and the Orders issued by the Government from time to time with regard to absorption and should have cleared the case of the petitioner for absorption in grant-in-aid post of Lecturer in Commerce in the College. Considering the merits and qualifications possessed by the petitioner, it is a fit case where petitioner is to be absorbed in the existing grant-in-aid post of Lecturer in Commerce in Pragathi Maha Vidyalaya Degree College, Hyderabad.

Heard both sides.

It appears, petitioner has not only passed M.Com with Distinction with 72% of marks, but also passed National Eligibility test conducted by the University Grants Commission. It is not the case of the respondents that the petitioner was appointed by back-door method and on the other hand, they admitted that the petitioner is eligible and fully qualified to hold the post of Lecturer in any

University/College. Since 1990 he has been working as Lecturer and thus put in more than 17 years of service as of now. The case of the petitioner was rejected not on the ground that he is not qualified, but on the ground that there is a ban on filling-up of aided vacant posts etc. His case was rightly recommended by the 3rd respondent when a sanctioned post of Lecturer in Commerce is available in the Pragathi Maha Vidhyalaya Degree College, Hyderabad. It is admitted by the 1st respondent in the counter that the Government in some cases have relaxed the selection procedure and absorbed the individuals into grant-in-aid and the action of the Management of the 3rd respondent-College in appointing Dr.R.V.Anuradha into grant-in-aid post was ratified by the Government. I am of the opinion that once there is a sanctioned i.e. aided post is available and the petitioner is fully qualified and working for the last more than 17 years without any complaint, he is entitled for relaxation of the selection procedure and for appointment into the grant-in-aid vacant post as was done in the case of others. Therefore, denying the regularization of the services of the petitioner in the given circumstances of this case is arbitrary and illegal.

In the circumstances, the impugned Memo dated 20-12-2004 is liable to be set aside and is accordingly set aside. The respondents are directed to consider the case of the petitioner for regularization of his services by relaxing the selection procedure etc., and pass appropriate orders within a period of eight (8) weeks from the date of receipt of a copy of this Order and communicate the same to the petitioner.

The Writ Petition is allowed to the extent indicated above. No order as to costs.

04-10-2007

prk